International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2826/2016*, **

Communication submitted by:	Kuvvatali Mudorov (not represented by counsel)
Alleged victim:	The author
State party:	Tajikistan
Date of communication:	28 March 2016 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 14 October 2016 (not issued in document form)
Date of adoption of Views:	25 October 2018
Subject matter:	Nationalization of private company, compensation
Procedural issues:	None
Substantive issues:	Effective remedy; fair and public hearing; discrimination
Articles of the Covenant:	2 (3), 14 (1) and 26
Articles of the Optional Protocol:	2 and 3

1. The author of the communication is Kuvvatali Mudorov, a national of Tajikistan born in 1952. He claims that the State party violated his rights under articles 2 (3), 14 (1) and 26 of the Covenant. The Optional Protocol entered into force for Tajikistan on 4 April 1999. The author is not represented by counsel.

The facts as submitted by the author

2.1 In 1996, the Republican Rehabilitation Centre was sold by auction and became a private company. From 1997 to 2002, the author purchased 32,480 shares of the company, of which he thereby owned 90 per cent of it.

2.2 In 2004, the Government decided to nationalize the company. Given that the author refused to "give up" the company, the Office of the Prosecutor General took the case to

* Adopted by the Committee at its 124th session (8 October–2 November 2018).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany, Margo Waterval and Andreas Zimmermann.

court. On 26 March 2004, the Supreme Economic Court of Tajikistan decided to void the outcome of the auction held in 1997, as well as all company founding documents. The court awarded compensation to the author for the amount of 50,891 somoni (approximately $17,548).

2.3 Although the compensation awarded to the author was equivalent to the amount he had paid to acquire the company shares, after taking into account inflation and price increases, the amount of compensation should have been approximately 10 million somoni. The author submits that the court decision amounted to a "raid operation" by the Government, given that the auction and the subsequent privatization of the company were conducted in accordance with the relevant laws and regulations in force at the time. In addition, the compensation awarded to the author does not even remotely correspond to the actual value of the company. On an unspecified date, the author appealed the Supreme Economic Court decision of 26 March 2004. On 25 June 2004, the author's appeal was dismissed.

2.4 Between 2004 and 2008, the author submitted appeals under the supervisory review proceedings to the Supreme Economic Court, and complaints to the Parliament, to the President's Office and to the President. In 2014 and 2015, the author requested the Supreme Economic Court five times to re-examine his case on the basis of new circumstances; the Court dismissed his requests. On 22 September 2015, the Court upheld the initial court decision.

2.5 The author claims that the lawsuit brought by the Government (the Office of the Prosecutor General) was time-barred, given that it had to be submitted within three years, while the Government took the case to court seven years after the privatization.[1]

2.6 The Government therefore violated the author's property rights, in contravention of all existing laws and regulations, thus amounting to company raiding, while the courts failed to protect his rights by allowing a fair hearing by an independent tribunal. According to the author, the decision taken by the Supreme Economic Court has not been enforced. The State Committee for the Management of State Property, the State organ responsible, which the Court ordered to compensate the author, did not pay the awarded amount of 50,891 somoni. The author has therefore not received any compensation to date.

The complaint

3. The author submits that the State party, by raiding his company and by denying him access to a fair hearing by an independent court and his right to an effective remedy, violated his rights under articles 2 (3), 14 (1) and 26 of the Covenant.

State party's observations on admissibility and the merits

4.1 The State party submitted observations on the admissibility and merits of the case on 5 January 2017. The State party explains that the Prosecutor General initiated proceedings in the interest of the Ministry of Health against the State Committee for the Management of State Property, with as co-defendants the author and the Somon-1 company in Dushanbe city, to invalidate (declare null and void) the auction and the transformation of the Kharangon Rehabilitation Centre into a public joint-stock company. The State party maintains that the author's complaints about his disagreement with the legal acts on the economic dispute, as well as alleged violations of his rights during the trial, were duly considered. On 26 March 2004, the Supreme Economic Court of Tajikistan declared the auction and its results void, thus returning the parties to their original status, and compensated the author. On 25 June 2004, the appellate instance of the Supreme Economic Court upheld the decision. The author's repeated appeals to the Office of the Prosecutor General were carefully examined, and detailed answers were sent to him.

4.2 An examination of the privatization process of the rehabilitation centre revealed that its transformation into a joint-stock company and its subsequent privatization were carried

[1] According to the Civil Code of Tajikistan, the general statute of limitations is three years. The State party did not challenge this assertion of the author.

out in violation of current legislation. According to the laws on the privatization of State property, health, cultural and education facilities may be privatized only by government decree. The Government did not issue a decree on the privatization of the rehabilitation centre. Despite this fact, in 1996, the respondent/civil defendant, the State Committee for the Management of State Property, on its own initiative, transformed the health facility into a joint-stock company. On 18 October 1996, the State Committee signed the memorandum of association with the Kharangon public joint-stock company. On 28 December 1996, 40 per cent of company shares were sold to a work community (*trudovoj kollectiv*).

4.3 The charter of the Kharangon public joint-stock company was registered by the State notary office on 18 February 1997. The registration certificate of the charter was issued the same day; the Kharangon company thus obtained its legal capacity as a legal entity at that time. Consequently, the memorandum of association of 18 October 1996 and the contract of sale and purchase of the shares of the Kharangon company (dated 28 December 1996) were therefore concluded with an entity that, legally, did not exist.

4.4 According to article 46 of the Civil Code of Tajikistan (in force at the time), contracts that do not comply with the requirements of the relevant law are invalid. On that basis, the court concluded that the constituent agreement of 18 October 1996 on the conversion of the Kharangon rehabilitation centre into the public joint-stock company and the contract of sale of the property of 24 October 1996 are null and void.

4.5 During the organization and holding of the auction of the remainder of the company's shares, the State defendant (the State Committee for the Management of State Property) was also responsible for other violations of the law. According to article 26 of Regulation No. 513 of 16 December 1997 on the procedure for conducting auctions and tenders, notification of the sale of State property must be published no less than 30 days before the auction, in the official State language and in Russian. On 27 May 1998, the newspaper *Sadoy Mardum* published a notice in Russian about the sale of shares of the Kharangon joint-stock company, to be held on 27 June 1998; the auction was actually held on 22 June 1998. The person who made the winning bid to purchase 30 per cent of the shares was the author of the notice himself, while the Somon-1 company in Dushanbe acquired 10 per cent of the shares. Similar violations of the law were repeated at the auction held on 27 April 2002, when the remaining 20 per cent of company shares were sold; the author was also the party responsible for making the winning bid.

4.6 The Supreme Economic Court declared the sale of Kharangon company shares on 22 June 1998 and 27 April 2002 invalid insofar as non-compliant with legal requirements. The Court returned the parties to their original status and ordered the State Committee for the Management of State Property to recover the sum of 50,891.30 somoni for the author and 8,484.85 somoni for the Somon-1 company in Dushanbe.

4.7 The State party points out that the proceedings held by the Supreme Economic Court were carried out on the basis of the principle of the equality of the parties. The Court does not have the right to accord favourable treatment to any party in its actions, nor to infringe the rights of any of the parties. The materials on the case file also show that, during the consideration of the author's claim, his procedural rights were fully respected: he was present during court hearings, he filed different motions, he presented his arguments and evidence to the Court, he participated in their examination, and he participated directly in judicial discussions.

4.8 Furthermore, according to parts 2 and 3 of article 270 of the Code of Economic Procedure, parties to an economic dispute have a right to appeal under the supervisory review proceedings to the Supreme Economic Court of Tajikistan within six months of entry into force of the judicial decision being challenged. The author's appeals were accordingly reviewed by that court and rejected. The State party therefore submits that the judicial acts in the author's case are lawful and justified. The economic courts did not violate any of the rights of the parties to the economic dispute.

Author's comments on the State party's observations

5.1 On 28 June 2017, the author challenged the State party's observations, reiterated his main arguments and recounted the procedures followed in the courts. He submits that, to

date, he has not received any compensation from the State. He maintains that, following the court's decisions, he was left without a job, was forced to file for bankruptcy and has been poor for the past 13 years. He again claims that the amount he paid for the company shares, 50,891 somoni, was supposed to be reimbursed by the State party; to date 20 years later, he is still to receive payment from the State. In the meantime, the value of the facilities have increased hundreds of times over, while the purchasing power of his money has declined by just as much.

5.2 The author claims that he is not responsible for the fact that the decision to privatize the rehabilitation centre was taken by the State Committee for the Management of State Property rather than by government decree, as prescribed by law. The author notes that the responsibility lies with the State organ and its public officials. His purchase of the company shares was bona fide, and he considered himself a bona fide proprietor until the court decisions. He claims that the courts did not take this into consideration.

5.3 In 2014 and 2015, the author appealed five times to the Supreme Economic Court on the grounds of the new circumstances in the case, reiterating that no decision had been taken concerning the shares, that the shares were not annulled, and he had not been compensated. He requested that the privatized facilities be returned to him or that he be paid compensation for his shares on the basis of their purchase value or indexed, as required by law. He claims that, although in 2004 the real value of his shares had increased by 24 times (to 1,250,000 somoni), the Court awarded him compensation amounting to only 50,890 somoni.

5.4 On 5 February 2018, the author submitted a copy of the act of construction, repair and improvement works that were undertaken in the rehabilitation centre between 1997 and 2014.

5.5 On 25 April 2018, the author reiterated his previous arguments and again recalled that he still had not received the compensation awarded by the Supreme Economic Court.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note of the author's assertion that all available and effective domestic remedies have been exhausted. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 With regard to the alleged violation of article 26 of the Covenant, the Committee considers that the claim according to which the author was denied the right to equality before the law and equal protection of the law without any discrimination is insufficiently substantiated for the purposes of admissibility, and is thus inadmissible under article 2 of the Optional Protocol.

6.5 The Committee considers that the author has sufficiently substantiated his claims under article 14, read alone and in conjunction with article 2 (3) of the Covenant, for the purposes of admissibility. Accordingly, it declares this part of the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that the State party, by subjecting him to "extortion" and by denying him access to a fair trial by an independent court, violated his rights under article 14 (1) of the Covenant. It further notes that, according to the author, the lawsuit brought by the Office of the Prosecutor General was time-barred, since it should have been brought within three years but was actually brought seven years after the privatization. The Committee also notes that although the court awarded compensation to the author amounting to 50,891 somoni, the latter has been unable to secure the enforcement of that decision to date. The State party failed to explain why, more than 14 years after the court's decision of 26 March 2004, the author had not yet received that sum. Accordingly, given that the right of access to a court, in accordance with article 14 (1) of the Covenant, would remain illusory if a final and binding judicial decision remained ineffective to the detriment of a party,[2] and that action to ensure "that the competent authorities shall enforce such remedies when granted", in accordance with article 2 (3) (c) of the Covenant, would also remain illusory, the Committee considers that the failure to enforce the above-mentioned decision by the authorities of Tajikistan constitutes a violation of the author's rights guaranteed by article 14 (1), read alone and in conjunction with article 2 (3) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 14 (1), read alone and in conjunction with article 2 (3) of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is required, inter alia: (a) to fully enforce the court decision of 26 March 2004; (b) to take into account all appropriate factors in updating the enforcement on the date of its execution, including the damages suffered by the author as a result of the undue delay in payment of compensation; and (c) to take steps to prevent similar violations occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

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[2] See European Court of Human Rights, *Hornsby v. Greece*, judgment of 19 March 1997, para. 40, and *Paudicio v. Italy*, judgment of 24 May 2007, para. 53.